

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Price Cap Performance Review
for Local Exchange Carriers

CC Docket No. 94-1

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**REPLY COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.**

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to the Commission's *Second Further Notice of Proposed Rulemaking*,¹ hereby respectfully submits its Reply Comments in response to the Commission's review of local exchange carriers' ("LECs") Price Cap performance in the above-captioned proceeding.

It comes as no surprise that most local exchange carriers ("LECs") enthusiastically endorse the Commission's proposal to dismantle much of the Price Cap regulatory system in response to perceived "competition" for access services, and indeed urge it to take even larger steps sooner than contemplated in the *Second Further NPRM*. These companies have been pursuing the same agenda for several years, and repeating the same arguments at every opportunity. Those arguments have not been persuasive in the past, however, and nothing has changed in recent months to give them any greater credence.

The key factors that should lead the Commission to resist the continuing LEC demands for immediate and virtually complete deregulation are (1) the LECs continue to control bottleneck

¹ *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, FCC 95-393 (released Sept. 20, 1995) ("*Second Further NPRM*").

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facilities, (2) actual and potential competitors of the LECs are critically dependent on access to those facilities at regulated prices in order to enter and remain in the market, and (3) the scope of competition for interstate access services remains very limited, with respect to both service market and geographic market definitions.

Although the LECs generally claim that additional pricing flexibility is required to permit them to “respond to competition” and offer competitive prices and services to their interstate access customers, it is significant that most of the customers who would supposedly benefit from this flexibility are at best skeptical about the benefits. All of the four largest access customers (AT&T, MCI, Sprint, and LDDS Worldcom), as well as many of their smaller counterparts and organizations representing large end users, oppose the pricing flexibility proposals in the *Second Further NPRM*, even as they argue that access charges should be reduced. These carriers have good reason to fear that pricing flexibility will be used by the LECs to discriminate among customers, not to benefit them; and that regulatory oversight, not regulatory abdication, is the best way of achieving more rational pricing in markets that are still far from effectively competitive.

In contrast to most of the LEC rhetoric, NYNEX has presented a relatively constructive proposal for an “adaptive” regulatory model that would be tailored *both* to the removal of barriers to entry and to the actual level of competition in both service markets and geographic markets. The incorporation of both tests is critical, because most of the parties agree that, while removal of barriers to entry and the presence of competitors in a market are both necessary conditions to the effective operation of market forces, neither one alone is sufficient. Although MFS does not agree with all the specific provisions of NYNEX’s proposal, it does agree with the broad concept of establishing different levels of regulation for different LECs, and for different products offered and

geographic areas served by a particular LEC, based upon the achievement of competitive goals in each market. The NYNEX framework could readily be adapted to incorporate competitive “checklists” like those advocated by MFS in its initial comments in this proceeding as well as the similar checklist approaches presented by several other parties. MFS suggests that the Commission issue a *Third Further NPRM* in which it proposes to adopt the NYNEX framework as a basis for coordinating its price caps, access charge reform, and related LEC regulation policies, and solicit comments on the precise checklist elements and other criteria that should be adopted to govern movement from one regulatory “framework” to the next.

MFS also agrees with the comments of LDDS Worldcom regarding the need for the Commission to devote considerably more attention to the problem of unreasonable discrimination. The *Second Further NPRM* appears to envision a market in which LECs and competitors will each have separate networks and will compete to offer customers end-to-end services. In such a simple market paradigm, unreasonable discrimination would not be a serious concern because competitors would have a strong incentive to offer services and prices that met consumer demand. The real telecommunications market, however, is much more complex. No new entrant today can deploy a stand-alone telecommunications network without relying on bottleneck services and facilities controlled by the incumbent LECs. Competitors in the local market will also continue to be customers of the LECs—they will rely upon the incumbent LECs in order to provide end-to-end communications services between their customers and the majority (initially, nearly all) customers still served by the incumbent LECs. As a result, competition in the local exchange market will not conform to the “perfect competition” model of economic theory, in which each seller bases its production on its own costs and market demand without any regard for the actions of other sellers.

Rather, the investment and pricing decisions of new entrants will be heavily influenced by the prices set by the incumbents for their bottleneck services and facilities. This means that any unreasonable discrimination by incumbent LECs targeted at their competitors could severely impair or even preclude effective competition in the ultimate consumer marketplace.

This dual relationship between dominant LECs and new entrants—simultaneously competitors and customers or suppliers of one another—is particularly troublesome in the case of interstate access services, because nearly all interstate access services have bottleneck characteristics. In the state jurisdictions, it is often possible to draw a reasonably bright line between “retail” services that will be offered principally to end users, and “wholesale” services that will be offered principally to other carriers, and to implement different regulatory schemes for the two classes of service. It is much more difficult to make such a distinction in the interstate access regime, because nearly all access services have “wholesale” characteristics and are sold primarily, albeit not exclusively, to other carriers.

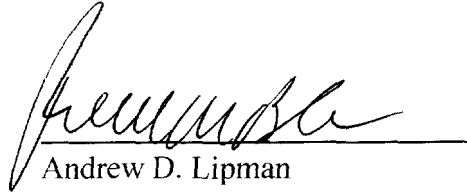
As MFS documented in its initial comments in this proceeding, the incumbent LECs plainly retain the ability to put their competitors at a disadvantage by overpricing bottleneck facilities, as evidenced (for example) by the Commission’s determination that most of the LECs had filed unjust and unreasonable rates for expanded interconnection. The Commission’s proposals to reduce regulation of “new services” and to facilitate waivers of the Part 69 rules are precisely the opposite of the regulatory policies demanded by the changing competitive environment. More, not less, regulatory scrutiny of prices for services that are essential to actual and potential competitive entrants is imperative.

For similar reasons, the Commission's proposal to authorize Alternative Pricing Plans (APPs) for LEC access services should be rejected because of the potential for unlawful discrimination inherent in such a scheme. MFS, in its initial comments in this proceeding and in many previous filings referenced therein, has demonstrated that LEC volume and term discounting of special access services has had anti-competitive effects. APPs would simply be a new name for volume and term discounting, and would be an open invitation to the LECs to devise pricing plans that benefit selected categories of customers while penalizing competitors who must purchase LEC access services in order to enter the market.

For the foregoing reasons, MFS urges the Commission to reject the proposals contained in the *Second Further NPRM*, and instead to adopt rules that require LECs to demonstrate the existence of actual competition, premised upon the removal of barriers to entry, *before* receiving any greater pricing flexibility than they already enjoy. Even after effective competition exists, the Commission

should maintain an oversight role to prevent discriminatory pricing of bottleneck facilities and services required by new entrants in order to remain in the market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew D. Lipman", written over a horizontal line.

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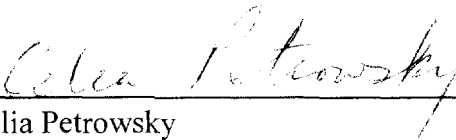
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January 16, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January 1996, copies of the foregoing Reply Comments of MFS Communications Company, Inc. were sent via First-Class mail, postage prepaid, or Hand-Delivery ** to the parties on the attached service list.



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